

# **JOURNAL OF THE SENATE**

## **EIGHTY-SEVENTH SESSION**

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THIRTY-FIRST DAY

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STATE OF SOUTH DAKOTA  
Senate Chamber, Pierre  
Thursday, March 1, 2012

The Senate convened at 10:00 a.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Paul Bly, followed by the Pledge of Allegiance led by Senate page Peter Delgado Jr.

Roll Call: All members present except Sens. Hundstad and Nygaard who were excused.

### **APPROVAL OF THE JOURNAL**

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the thirtieth day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,  
Bob Gray, Chair

Which motion prevailed.

## COMMUNICATIONS AND PETITIONS

February 29, 2012

Mr. President and Members of the Senate:

I have the honor to inform you that on February 29, 2012, I approved Senate Bills 5, 8, 11, 13, 19, 20, 29, 30, 31, 39, 41, 56, 57, 67, 69, 87, 107, 115, and 168, and the same have been deposited in the office of the Secretary of State.

Respectfully submitted,  
Dennis Daugaard  
Governor

## REPORT OF STANDING COMMITTEE

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that SB 43, 75, 161, 162, 174, and 187 were delivered to his Excellency, the Governor, for his approval at 8:55 a.m., March 1, 2012.

Respectfully submitted,  
Bob Gray, Chair

## REPORT OF CONFERENCE COMMITTEE

cc141A

MR. PRESIDENT:

The Conference Committee respectfully reports that it has considered SB 141 and the amendments thereto made by the House, and the disagreement of the two houses thereon, and recommends that SB 141 be amended as follows:

141jc

On page 1 of the House engrossed bill, delete lines 7 to 13, inclusive, and insert:

"or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between family or household members, or a pattern of abusive behaviors by persons in an intimate relationship such as marriage, dating, or cohabitation. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse

1 if the underlying criminal act is committed between family or household members or persons  
2 in an intimate relationship;"

3 On page 2, line 2, delete "with a person of the opposite sex".

4 On page 2, line 3, delete "with a person of the opposite sex".

5 Respectfully submitted,  
6 Tona Rozum  
7 House Committee Chair

Respectfully submitted,  
Deb Peters  
Senate Committee Chair

8 **MESSAGES FROM THE HOUSE**

9 MR. PRESIDENT:

10 I have the honor to inform your honorable body that the House has concurred in Senate  
11 amendments to HB 1234.

12 Also MR. PRESIDENT:

13 I have the honor to inform your honorable body that the House has appointed Reps. Wick,  
14 Willadsen, and Feickert as a committee of three on the part of the House to meet with a like  
15 committee on the part of the Senate to adjust the differences between the two houses on SB 91.

16 Respectfully,  
17 Karen Gerdes, Chief Clerk

18 Sen. Olson moved that the Senate do now recess until 1:00 p.m., which motion prevailed  
19 and at 10:15 a.m., the Senate recessed.

20 **RECESS**

21 The Senate reconvened at 1:00 p.m., the President presiding.

## REPORT OF STANDING COMMITTEE

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Office of Engrossing and Enrolling has carefully compared SB 157 and finds the same correctly enrolled.

Respectfully submitted,  
Bob Gray, Chair

## REPORTS OF CONFERENCE COMMITTEES

cc183A

MR. PRESIDENT:

The Conference Committee respectfully reports that it has considered SB 183 and the amendments thereto made by the House, and the disagreement of the two houses thereon, and recommends that SB 183 be amended as follows:

183rd

On page 1, line 13, of the restored printed bill, delete "upon" and insert "within a reasonable time after".

183rc

On the House Judiciary Committee engrossed bill, delete the House Judiciary Committee amendment, thus restoring the bill to the printed version.

Respectfully submitted,  
Jamie Boomgarden  
House Committee Chair

Respectfully submitted,  
Mike Vehle  
Senate Committee Chair

cc193A

Also MR. PRESIDENT:

The Conference Committee respectfully reports that it has considered SB 193 and the amendments thereto made by the House, and the disagreement of the two houses thereon, and recommends that the Senate do not concur with the House amendments to SB 193 and do appoint a new committee.

Respectfully submitted,  
David Lust  
House Committee Chair

Respectfully submitted,  
Larry Tidemann  
Senate Committee Chair

1 cc91A

2 Also MR. PRESIDENT:

3 The Conference Committee respectfully reports that it has considered SB 91 and the  
4 amendments thereto made by the House, and the disagreement of the two houses thereon, and  
5 recommends that SB 91 be amended as follows:

6 91ftc

7 On page 1, line 1, of the printed bill, delete "officers" and insert "shareholders".

8	Respectfully submitted,	Respectfully submitted,
9	Hal Wick	Al Novstrup
10	House Committee Chair	Senate Committee Chair

11 **MESSAGES FROM THE HOUSE**

12 MR. PRESIDENT:

13 I have the honor to inform your honorable body that the House has adopted the report of  
14 the Conference Committee on SB 157.

15 Also MR. PRESIDENT:

16 I have the honor to inform your honorable body that the House has passed HB 1116 over  
17 the veto of the Governor. The veto message of the Governor is found on page 687 of the House  
18 Journal.

19 We hereby request your favorable consideration in passing HB 1116, the veto of the  
20 Governor notwithstanding.

21 Also MR. PRESIDENT:

22 I have the honor to inform your honorable body that a change has been made in the House  
23 Conference Committee on SB 77. The committee should be Reps. Gosch, Cronin, and Fargen.

1 Also MR. PRESIDENT:

2 I have the honor to inform your honorable body that the House has concurred in Senate  
3 amendments to HB 1228.

4 Respectfully,  
5 Karen Gerdes, Chief Clerk

6 **MOTIONS AND RESOLUTIONS**

7 Sen. Johnston moved that the Senate do concur in House amendments to SB 25.

8 The question being on Sen. Johnston's motion that the Senate do concur in House  
9 amendments to SB 25.

10 And the roll being called:

11 Yeas 32, Nays 0, Excused 3, Absent 0

12 Yeas:

13 Adelstein; Begalka; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;  
14 Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson  
15 (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden;  
16 Schlekeway; Sutton; Tidemann; Tieszen; Vehle

17 Excused:

18 Bradford; Hundstad; Nygaard

19 So the motion having received an affirmative vote of a majority of the members-elect, the  
20 President declared the motion carried and the amendments were concurred in.

21 HCR 1016: A CONCURRENT RESOLUTION, Concerning endorsement of Taiwan's  
22 participation as observer in the International Civil Aviation Organization (ICAO), and the 28<sup>th</sup>  
23 anniversary of sister state relations with the Province of Taiwan in the Republic of China  
24 (Taiwan).

25 Was read the second time.

26 Sen. Brown moved that the Senate do concur in HCR 1016 as found on page 569 of the  
27 House Journal and as amended on page 620 of the House Journal.

28 The question being on Sen. Brown's motion that HCR 1016 be concurred in as amended.

29 And the roll being called:

1 Yeas 32, Nays 0, Excused 3, Absent 0

2 Yeas:

3 Adelstein; Begalka; Brown; Buhl; Cutler; Frerichs; Frysliie; Gray; Hansen (Tom); Haverly;  
4 Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson  
5 (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden;  
6 Schlekeway; Sutton; Tidemann; Tieszen; Vehle

7 Excused:

8 Bradford; Hundstad; Nygaard

9 So the motion having received an affirmative vote of a majority of the members-elect, the  
10 President declared the motion carried and HCR 1016 was concurred in as amended.

11 **CONSIDERATION OF REPORTS OF CONFERENCE COMMITTEES**

12 Sen. Novstrup moved that the report of the Conference Committee on SB 91 as found on  
13 page 643 of the Senate Journal be adopted.

14 The question being on Sen. Novstrup's motion that the report of the Conference Committee  
15 on SB 91 be adopted.

16 And the roll being called:

17 Yeas 32, Nays 0, Excused 3, Absent 0

18 Yeas:

19 Adelstein; Begalka; Brown; Buhl; Cutler; Frerichs; Frysliie; Gray; Hansen (Tom); Haverly;  
20 Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman; Maher; Nelson  
21 (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden;  
22 Schlekeway; Sutton; Tidemann; Tieszen; Vehle

23 Excused:

24 Bradford; Hundstad; Nygaard

25 So the motion having received an affirmative vote of a majority of the members-elect, the  
26 President declared the motion carried and the report was adopted.

27 Sen. Peters moved that SB 141 be placed to follow SB 193 on today's calendar.

28 Which motion prevailed.

1 Sen. Vehle moved that the report of the Conference Committee on SB 183 as found on  
2 page 642 of the Senate Journal be adopted.

3 The question being on Sen. Vehle's motion that the report of the Conference Committee  
4 on SB 183 be adopted.

5 And the roll being called:

6 Yeas 33 Nays 0, Excused 2, Absent 0

7 Yeas:

8 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
9 Haverly; Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;  
10 Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave;  
11 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

12 Excused:

13 Hundstad; Nygaard

14 So the motion having received an affirmative vote of a majority of the members-elect, the  
15 President declared the motion carried and the report was adopted.

16 Sen. Tidemann moved that the report of the Conference Committee on SB 193 as found  
17 on page 642 of the Senate Journal be adopted.

18 The question being on Sen. Tidemann's motion that the report of the Conference  
19 Committee on SB 193 be adopted.

20 Sen. Brown moved as a substitute motion that the Senate do not adopt the report of the  
21 Conference Committee on SB 193 as found on page 642 of the Senate Journal and do not  
22 appoint a new committee.

23 The question being on Sen. Brown's substitute motion to not adopt the report of the  
24 Conference Committee on SB 193 and to not appoint a new committee.

25 And the roll being called:

26 Yeas 33, Nays 0, Excused 2, Absent 0

27 Yeas:

28 Adelstein; Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom);  
29 Haverly; Heineman; Holien; Hunhoff (Jean); Johnston; Juhnke; Kraus; Krebs; Lederman;  
30 Maher; Nelson (Tom); Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave;  
31 Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle



1           Excused:  
2   Hundstad; Nygaard

3 So the motion having received an affirmative vote of a majority of the members-elect, the  
4 President declared the motion carried, the report was not adopted, and no new committee was  
5 appointed.

6 Sen. Brown moved that the Senate do now recess until 4:00 p.m., which motion prevailed  
7 and at 1:40 p.m., the Senate recessed.

## 8 RECESS

9 The Senate reconvened at 4:00 p.m., the President presiding.

10 **SIGNING OF BILLS**

11 The President publicly read the title to

12 SB 25: FOR AN ACT ENTITLED, An Act to provide for the creation of a new state  
13 accountability system for public elementary and secondary schools.

14 SB 157: FOR AN ACT ENTITLED, An Act to revise certain provisions relating to outdoor  
15 advertising signs.

16 SB 183: FOR AN ACT ENTITLED, An Act to establish the elements of the offense of  
17 juvenile sexting and to provide a penalty therefor.

18 HB 1046: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding child  
19 custody during a soldier's deployment.

20 HB 1058: FOR AN ACT ENTITLED, An Act to make an appropriation to the Unified  
21 Judicial System court automation fund and revise certain record search fees charged by clerks  
22 of court.

23 HB 1096: FOR AN ACT ENTITLED, An Act to specify the venue for certain appeals  
24 involving home-rule municipalities.

25 HB 1137: FOR AN ACT ENTITLED, An Act to revise the General Appropriations Act  
26 for fiscal year 2012 and to declare an emergency.

27 HB 1186: FOR AN ACT ENTITLED, An Act to prohibit registered sex offenders from  
28 circulating petitions and to provide a penalty for the violation thereof.

1 HB 1189: FOR AN ACT ENTITLED, An Act to establish a deadline within each semester  
2 after which no student may transfer to a school district other than the resident school district  
3 through the enrollment options program.

4 HB 1206: FOR AN ACT ENTITLED, An Act to make an appropriation for emergency  
5 food assistance grants and to repeal the sales tax on food refund program.

6 HB 1228: FOR AN ACT ENTITLED, An Act to provide tax refunds for certain energy  
7 projects.

8 HB 1234: FOR AN ACT ENTITLED, An Act to provide incentives to teach in critical  
9 need areas, to provide for rewards for the best teachers and those teaching in math and science  
10 subject areas, to revise certain provisions regarding evaluation of teachers, to create a system  
11 for evaluating principals, to distinguish between tenured and nontenured teachers, to revise  
12 certain provisions regarding the employment of teachers, and to repeal provisions regarding the  
13 teacher compensation assistance program.

14 And signed the same in the presence of the Senate.

#### 15 **REPORTS OF STANDING COMMITTEES**

16 MR. PRESIDENT:

17 The Committee on Legislative Procedure respectfully reports that the Office of Engrossing  
18 and Enrolling has carefully compared SB 25 and 183 and finds the same correctly enrolled.

19 Also MR. PRESIDENT:

20 The Committee on Legislative Procedure respectfully reports that SB 157 was delivered  
21 to his Excellency, the Governor, for his approval at 2:55 p.m., March 1, 2012.

22 Respectfully submitted,  
23 Bob Gray, Chair

#### 24 **REPORT OF CONFERENCE COMMITTEE**

25 cc130A

26 MR. PRESIDENT:

27 The Conference Committee respectfully reports that it has considered SB 130 and the  
28 amendments thereto made by the House, and the disagreement of the two houses thereon, and  
29 recommends that SB 130 be amended as follows:

1 130ck

2 On page 2, line 5, of the House Education Committee engrossed bill, delete "may" and  
3 insert "shall".

4 130cl

5 On page 1, line 7, of the House Education Committee engrossed bill, after "policy" insert  
6 ", except that no school district policy prohibiting bullying, whether it is existing or adopted  
7 pursuant to this Act, may contain any protected classes of students".

8 On page 2, line 14, after "report;" insert "and".

9 On page 2, line 18, delete "; and" and insert ".".

10 On page 2, delete lines 19 and 20.

11 130ra

12 On page 3, line 1, of the House Education Committee engrossed bill, after "." insert  
13 "Moreover, the provisions of this Act do not create a cause of action against any school district,  
14 school district employee, school volunteer, student, or parent unless there has been substantial  
15 noncompliance with the school district's policy resulting in injury to a protected person."

16 Respectfully submitted,  
17 Jacqueline Sly  
18 House Committee Chair

Respectfully submitted,  
Dan Lederman  
Senate Committee Chair

19 **MESSAGES FROM THE HOUSE**

20 MR. PRESIDENT:

21 I have the honor to inform your honorable body that the House has failed to adopt the  
22 report of the Conference Committee on SB 141 and no new committee was appointed.

23 Also MR. PRESIDENT:

24 I have the honor to inform your honorable body that the House has concurred in Senate  
25 amendments to HB 1137.

1 Also MR. PRESIDENT:

2 I have the honor to inform your honorable body that the House has adopted the report of  
3 the Conference Committee on SB 183.

4 Respectfully,  
5 Karen Gerdes, Chief Clerk

6 **CONSIDERATION OF REPORTS OF CONFERENCE COMMITTEES**

7 Sen. Lederman moved that the report of the Conference Committee on SB 130 as found  
8 on page 648 of the Senate Journal be adopted.

9 The question being on Sen. Lederman's motion that the report of the Conference  
10 Committee on SB 130 be adopted.

11 And the roll being called:

12 Yeas 27, Nays 5, Excused 3, Absent 0

13 Yeas:

14 Adelstein; Begalka; Brown; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly; Heineman;  
15 Holien; Johnston; Juhnke; Kraus; Krebs; Lederman; Nelson (Tom); Novstrup (Al); Olson  
16 (Russell); Peters; Rampelberg; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

17 Nays:

18 Bradford; Buhl; Hunhoff (Jean); Maher; Putnam

19 Excused:

20 Hundstad; Nygaard; Rave

21 So the motion having received an affirmative vote of a majority of the members-elect, the  
22 President declared the motion carried and the report was adopted.

23 Sen. Olson moved that when we adjourn today, we adjourn to convene at 10:00 a.m. on  
24 Friday, March 2, the 32<sup>nd</sup> legislative day.

25 Which motion prevailed.

1           **CONSIDERATION OF EXECUTIVE VETOES AND RECOMMENDATIONS**

2           The Senate proceeded to the reconsideration of HB 1116 pursuant to the veto of the  
3 Governor and the veto message found on page 687 of the House Journal as provided in Article  
4 IV, Section 4, of the Constitution of the State of South Dakota.

5           The question being "Shall HB 1116 pass, the veto of the Governor notwithstanding?"

6           And the roll being called:

7           Yeas 26, Nays 6, Excused 3, Absent 0

8           Yeas:

9           Adelstein; Begalka; Bradford; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;  
10          Holien; Hunhoff (Jean); Johnston; Kraus; Krebs; Lederman; Maher; Nelson (Tom); Putnam;  
11          Rampelberg; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

12          Nays:

13          Brown; Heineman; Juhnke; Novstrup (Al); Olson (Russell); Peters

14          Excused:

15          Hundstad; Nygaard; Rave

16          So the bill having received an affirmative vote of a two-thirds majority of the members-  
17          elect, the President declared the bill passed, the veto of the Governor notwithstanding.

18          Sen. Tidemann moved that the Senate do now adjourn, which motion prevailed and at  
19          4:35 p.m. the Senate adjourned.

20

Fee Jacobsen, Secretary